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IN THE

# Supreme Court of the United States

No.....

HOTEL & RESTAURANT EMPLOYEES' BARTENDERS' INTERNATIONAL UNION, A. F. of L., HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705, CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234, MAX GAZAN, PEARL CRAIG AND GEORGE ASHER,
Petitioners,

vs.

RICHARDS-GREENFIELD, INC., a Michigan corporation,
Respondent

## PETITION FOR WRIT OF CERTIORARI

### OPINION BELOW

The highest court of the state denied a petition for certiorari without opinion, and the opinion of the lower state court is not reported.

## STATUTORY PROVISIONS GIVING JURISDICTION TO THIS COURT

The jurisdiction of this court rests on Section 1257(3) of the Judiciary Act of 1948 (T. 28, Section 1257(3), U. S. C. A.) as follows: Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: (3) By writ of certiorari, where any title, right, privilege or immunity is specially set up or claimed under the Constitution. • • •

and

The 1st Amendment to the Constitution of the United States which provides: "Congress shall make no law • • • or abridging the freedom of speech or of the press." • • •

and

The 5th Amendment of the Constitution of the United States which provides: "No person • • • shall be compelled in any criminal case to be a witness against himself, or be deprived of life, liberty or property, without due process of law" • • •

and

The 14th Amendment of the Constitution of the United States which provides: "Nor shall any state deprive any person of life, liberty, or property without due process of law."

## SUMMARY OF FACTS

Petitioner unions are members of the American Federation of Labor, and individual petitioners are union members. Respondent commenced suit in the Circuit Court for the County of Wayne, in Chancery, and obtained an injunction restraining peaceful picketing, except under limited conditions (R. 14). Thereafter, the chancery court, on petition of one Sidney Smith, signed an order to show cause naming the petitioner unions and the individual petitioners, Max Gazan and George Asher, as parties to appear before the court to show cause why they should not be punished for contempt for claimed violation of the court's injunction and to further show cause why they should not be enjoined from any picketing whatsoever (R. 27). No proof of the order to show cause was filed before hearing. Petitioner Pearl Craig was not named in the order to show cause (R. 27). Petitioners George Asher and Pearl Craig were not represented by counsel, and were not served with any papers in the proceedings (R. 69).

There is no dispute about the regularity or validity of a regular called strike and a bona fide labor dispute.

The Chancery Court, after taking testimony found the defendant unions guilty of contempt of court and imposed fines on each of the said unions. The court found the individual petitioners, Max Gazan, George Asher, and Pearl Craig, guilty of contempt of court and imposed fines and jail sentences on each of them. The court further broadened its injunction so as to restrain all picketing (R. 54-55).

None of the contempts for which fines and jail sentences were imposed transpired in open court or in view of the trial judge (R. 66).

This finding of petitioners guilty of contempt and the imposition of sentences and the restraint of all picketing was carried to the highest court of the state by the filing of a petition for certiorari requesting the appellate court to review the order and sentence of the chancery court, which petition set forth substantially the questions hereafter stated.

The testimony in the lower state court was not presented to the highest court of the state at the time of the petition for certiorari for the reasons that the record was too voluminous and it is not required under the state practice. Individual petitioners were witnesses at the hearing on the contempt proceedings but their conviction was for claimed injunction violation and not for their testimony.

The highest court of the state denied the petition for certiorari without opinion (R. 87).

It is the claim of the petitioners that respondent employed persons with criminal records to, first, assemble data for the obtaining of an injunction, and, second, after the injunction was obtained, to incite violence on the picket line for the basis of obtaining claimed injunction violations.

## QUESTIONS PRESENTED

The following questions are presented:

(1) Is it a denial of due process to convict the defendants, or any of them, of contempt of court summarily and without trial when the alleged misconduct is not committed in open court?

(2) As to the petitioners George Asher and Pearl Craig, is it a denial of due process to convict these individual petitioners of contempt of court summarily where they have never been served with any process in connection with the particular hearing, nor have either of them been informed of the nature of the charges against them, had an opportunity to examine the witnesses who testified, nor were they represented by counsel?

(3) Is it a denial of free speech for the court to order the termination of all picketing and the removal of all union personnel from the vicinity of the premises where a bona fide labor dispute was in progress?

## HOW QUESTIONS RAISED AND DISPOSED OF IN THE MICHIGAN COURT

Petitioner unions filed a motion for a more specific bill of particulars and to vacate the order to show cause before the hearing in the contempt proceedings. This motion was denied by the trial court. Petitioners Asher and Craig moved in open court, after trial, for dismissal of the charges against each of them because they had never been served with process in connection with the particular hearing, nor had either of them been informed of the nature of the charges against them, had an opportunity to examine the witnesses, or were they represented by counsel. The trial court commented:

> "That will be a matter, interesting as it may appear, for the Supreme Court to pass on."

The Supreme Court, the highest court of the state, denied certiorari without opinion. Likewise, the highest

court of the state, without opinion, confirmed the lower court's injunction restraining all picketing and removing all union members from the vicinity of the premises where a lawful strike was in progress.

## REASONS FOR ALLOWANCE OF THE WRIT

(A) Appeals from convictions for contempt are a matter of discretion with the highest court of the state, and in this case petitioners are denied their constitutional rights without opinion of that court. This practice is a clear violation of the due process clause of the Federal Constitution, and the constitutional right of free speech, but the Michigan courts have consistently refused to recognize that fact.

(B) The protection ordained by the Federal Constitution thus becomes meaningless for Michigan citizens unless this court intercedes in the Michigan situation.

(C) The denial of all picketing nullifies the right to strike and is a matter of great public interest.

## PRAYER

Wherefore petitioners and each of them pray that a writ of certiorari issue out of and under the seal of this Court directed to Supreme Court of the State of Michigan, the highest court of the state, or, in the alternative, to the Circuit Court for the County of Wayne, in Chancery, where the record is now lodged, after certiorari was denied by the highest court of the state without opinion,* demanding said court to certify and send to this Court a full and complete transcript of the record and proceedings in said cause to the end that said cause may be reviewed and determined by this court and that the judgment of the State Court be reversed and individual petitioners discharged from custody.

Respectfully submitted,

HUGH T. FRANCIS,
*Counsel for Petitioners.*

*The highest court of the state has returned the record of proceedings including briefs filed to the Clerk of the Trial Court and no part of the record remains with the Clerk of the Supreme Court.

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Summary of Facts contained in the Petition for Writ of Certiorari is a complete statement of the case and is incorporated here by reference.*

### ARGUMENT

#### I.

#### IT IS A DENIAL OF DUE PROCESS TO CONVICT THE DEFENDANTS OR ANY OF THEM OF CONTEMPT OF COURT SUMMARILY AND WITHOUT TRIAL, WHEN THE ALLEGED MISCONDUCT IS NOT COMMITTED IN OPEN COURT.

To preserve order in the court room for the proper conduct of business, the court must act instantly to suppress disturbances or violence or physical obstruction or disrespect to the court when occurring in open court. Under such circumstances, the court has the inherent power to act, and the punishment imposed by the court is due process of law.

The rule is altogether different, however, when the contempt charged, as in this case, occurs not in the presence of the court. In the case at bar, defendants were charged with the violation of an injunction issued by the court, and the acts complained of were not committed in the presence of the court. Under such circumstances, the court did not have such personal knowledge as would enable him to act without a hearing, and due process requires that the facts relied upon be established under oath

*See pages 3-4.

by others and the defendants be given an opportunity to meet the charges and to show cause why they should not be punished for contempt.

*Cooke v. United States*, 267 U. S. 517;
*In re Savin*, 131 U. S. 267, 33 L. Ed. 150, 9 Supreme Court Report 667.

The entire subject of due process of law in contempt proceedings was very thoroughly reviewed by the United State Supreme Court *in re Oliver*, 333 U. S. 257, in which the court said:

> "Except for a narrowly limited category of contempts, due process of law as explained in the Cooke Case requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct in open court in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public. If some essential elements of the offense are not personally observed by the judge so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the Cooke Case, that the accused be accorded notice and a fair hearing as above set forth."

The State of Michigan has a statute governing procedure in contempt cases. The applicable section is 27.513 M. S. A. and Section 27.515 M. S. A.*

The Michigan Supreme Court, *in re Gilliland*, 284 Mich. 604, said:

> "The judge unquestionably has the right summarily to punish one for illegal practice of the law in his presence. However, when the proof on the charge of contempt for illegal practice partly depends upon practices which took place outside of the court and prior to the hearing, the contemner is entitled first to have proper charges preferred against him so that he may answer them and prepare his defense. This has not been done, and, therefore, the conviction as to this contempt is set aside."

To the same effect *in re Ventchell*, 279 Mich. 690.

*In re NaLepa*, 298 Mich. 310, the court stated as follows:

> "We have carefully examined the record and briefs in this cause and find that no charge was filed against the petitioner. He was not informed of the nature of the charge against him. He was not served with any process or given an opportunity to

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*27.513 MSA: Same; misconduct not in the presence of court.

Section 3. When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense except in cases of disobedience to any rule or order requiring the payment of money, and the disobedience of any subpoena.

*27.515 MSA: Same; order to show cause. Attachment to arrest.

Section 5. In all cases other than that specified in the last section, the court shall either grant an order on the accused party to show cause at some reasonable time, to be therein specified why he should not be punished for the alleged misconduct, or shall issue an attachment to arrest such party, and to bring him before such court to answer for such misconduct.

defend himself. In the case at bar, a part of the transaction charged as contemptuous transpired in the immediate view and presence of the court, but other transactions occurred outside the hearing of the court. The admitted and known facts committed in the presence of the court were not such as would constitute a violation of III Compiled Laws 1929, Section 13.911 (M. S. A. 27.512), nor was the procedure such as to comply with III Compiled Laws 1929 (M. S. A. 27.513). Under the facts, it must be held that petitioner was deprived of his liberty without due process of law. The order of contempt must be set aside and vacated, and petitioner discharged without prejudice."

To the same effect *in re Smilay*, 235 Mich. page 156.

From the above, it is clearly established that it is a denial of due process to convict the petitioners or any of them of contempt of court summarily because each and every act and circumstance on which the charge of contempt of court is based occurred elsewhere than in the presence of the court.

## II.

**AS TO PETITIONERS GEORGE ASHER AND PEARL CRAIG, IT IS A DENIAL OF DUE PROCESS TO CONVICT THESE INDIVIDUAL PETITIONERS OF CONTEMPT OF COURT SUMMARILY WHERE THEY HAVE NEVER BEEN SERVED WITH ANY PROCESS IN CONNECTION WITH THE PARTICULAR HEARING, NOR HAS EITHER OF THEM BEEN INFORMED OF THE NATURE OF THE CHARGES AGAINST THEM, HAD AN OPPORTUNITY TO EXAMINE THE WITNESSES WHO TESTIFIED, NOR WERE THEY REPRESENTED BY COUNSEL.**

Defendant Pearl Craig was not named as a party defendant in the Bill of Complaint filed by the complainant, and no process was therefore issued against her. She was not named in the petition for the order to show cause, and no order to show cause was issued requiring her to appear in court and show cause why she should not be punished for contempt of court. The order to show cause which was issued in the case was not served upon her. She was not made a party to this cause by the plaintiff or by the court, and her only participation in the case was her appearance at the hearing as a witness for the defendants.

Not being a party to the proceedings, she had no right to be represented therein by counsel, and she had no counsel. She had no right to examine witnesses, and she did not do so. Not being a party to the cause, she had no right to offer testimony and she did not offer testimony in her behalf. She appeared in the proceedings merely as a witness called by the defendants in their behalf, and all proceedings in the case were conducted to their ultimate conclusion without her even being apprised that she was in any manner personally involved. Nevertheless, at the conclusion of the hearing, she was adjudged guilty of contempt of court by the trial judge, and a sentence of a fine

and imprisonment was pronounced upon her. That such proceedings were not due process under the *in re Oliver* and other cases herein cited is, we contend, a certainty, and the enforcement of the judgment against the person and property of Pearl Craig, who was not designated as a party, nor made a party by service of process, violates the due process clause of the Fifth and Fourteenth Amendments of the Constitution of the United States as this court found in the case of *Carl A. Hansbery, Nannie L. Hansbery, et al. v. Anna M. Lee, Edward L. Govanus, Esther Govanus, et al.*, 311 U. S. 32.

Defendant George Asher was named as a defendant in the Bill of Complaint. He was not served with process and did not appear personally or by counsel and the Court, therefore, did not acquire jurisdiction over him.

While he was named as one of the defendants in the order to show cause why the defendants should not be punished for contempt of court, the order to show cause was never served upon him, and he did not appear in court in response thereto, nor was he represented by counsel. His case parallels that of Pearl Craig in that the entire proceedings were had without him participating as a defendant and without the court obtaining jurisdiction over him personally. He appeared and testified in the cause in behalf of the other defendants, and, as in the case of Pearl Craig, was adjudged guilty of contempt by the trial court and ordered to pay a fine and sentenced to prison. Such adjudgment violates the due process clause of the Fifth and Fourteenth Amendments of the Constitution of the United States.

*Cole v. State of Arkansas*, 333 U. S. 196.

## III.

### IT IS A DENIAL OF FREE SPEECH FOR THE COURT TO ORDER THE TERMINATION OF ALL PICKETING AND THE REMOVAL OF ALL UNION PERSONNEL FROM THE VICINITY OF THE PREMISES WHERE A BONA FIDE LABOR DISPUTE WAS IN PROGRESS.

The basic right to picket, to advise customers of the relationship between employer and employee, to attempt to induce customers not to patronize, to publicize the dispute, and similar rights are established in *Thornhill v. Alabama*, 310 U. S. 88, under the right of free speech as constitutionally guaranteed. To the same effect of the case of *Carlson v. California*, 310 U. S. 106.

In *Cafeteria Employees v. Angelos*, 320 U. S. 293, the rights of workers engaged in a bona fide labor dispute are outlined in greater detail. The following language of Mr. Justice Frankfurter is pertinent to the present question:

> "And to use loose language or undefined slogans that are part of the conventional give and take in our economic and political controversies—like 'unfair' or 'fascist' is not to falsify facts."

And, finally as follows:

> "The present situation is thus wholly outside the scope of the decision in the *Milk Wagon Driver Union v. Meadowmoor Dairies*, 312 U. S. 287, 85 L. ed. 836., 61 Sup. Ct. 552, 132 A. L. R. 1200. There we sustained the equity power of a state because the record disclosed abuses deemed not episodic and isolated but on the very texture and process of the enjoined picketing, but we also made clear that the power to deny what otherwise would be lawful picketing derives from the power of the states to prevent future coercion. Rights of free speech in the future cannot be forfeited because of disasso-

ciated acts of past violence. 312 U. S. at 296, 85 L. ed. 842, 61 S. Ct. 552, 132 A. L. R. 1200. Still less can the right to picket itself be taken away merely because there may have been isolated incidents of abuse falling far short of violence occurring in the course of that picketing."

The State of Michigan has provided by statute acts which shall constitute unlawful conduct in the process of picketing. That statute is Statute 17.454 (10.5 M. S. A.)* and that statute specifically provides that:

> "Provided that picketing to the extent that the same is authorized under constitutional provisions shall in no measure be prohibited."

The Supreme Court of the State of Michigan has held that peaceful picketing by members of a labor union is within the constitutional guarantees of free speech.

*Standard Grocer Company v. Local 406,* 321 Mich. 276;

*Silkworth v. Local 575, AFL,* 309 Mich. 746;

*Lafayette Dramatic Productions v. Ferentz,* 305 Mich. 193.

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*17.454 (10.5 MSA). Mass picketing of place of employment, or unlawful treatment or force obstructing work, ingress, egress, or use of public way declared unlawful; picketing of residences barred; Sec. 9F. It shall be unlawful (1) for any person or persons to hinder or prevent by mass picketing, unlawful threats or force, the pursuit of any lawful work or employment, (2) to obstruct or interfere with entrance to or egress from any place of employment, (3) to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance, or, (4) to engage in picketing a private residence by any means or method whatever: provided that picketing to the extent that the same is authorized under constitutional provisions shall in no measure be prohibited. Violation of this section shall be a misdemeanor and punishable as such. (CL 48, 423, 9F.)

The injunction in this case is one in which the court set forth his idea of what peaceful picketing should consist of in this particular labor dispute. We respectfully submit that while the court had the right to punish for violating the injunction, he did not have the right to terminate peaceful picketing.

Testimony in the contempt proceedings shows that just prior to the strike, respondent employed two persons with criminal records, and it is the claim of petitioners that these men were employed to, first, assemble data for the obtaining of an injunction, and, second, after the injunction was obtained, to incite violence on the picket line for the basis of obtaining claimed injunction violations. One was William Thompson, who carried the title of Assistant Manager, and the other was Ray Dollinger, who acted, in part, as a photographer. Petitioners further claim that it was the deliberate intent and purpose of respondent, as shown by the action of these two men, to prevent peaceful picketing of their premises, and to deliberately provoke incidents in an attempt to incite violations of the injunction. Counsel for respondents must admit that Thompson left the employment immediately after the trial. Counsel must further admit that subsequent to the hearing, Thompson was arrested, and his arrest was reported in three of the Detroit papers. A copy of one of these newspaper articles is attached hereto as an addendum to this brief. We concede that newspaper articles are not conclusive evidence. We do contend, however, that notwithstanding the fact that there was other evidence on which the trial judge might have found the defendants guilty, that the testimony of these two men was improperly considered, and when properly considered, points to a scheme to cause violence for which the individual defendants were convicted and sentenced to jail.

## CONCLUSION

We have shown that there is involved in this petition a question of the fining and imprisonment of petitioners for the alleged contempt of court not committed in the presence of the court in a proceeding in which some were not parties, in violation of the due process clause of the Constitution of the United States, and the right to enjoin peaceful picketing in a bona fide labor dispute contrary to the right of free speech, as provided in the First Amendment of the Constitution, and contrary to the decisions of this Court.

Therefore, we respectfully urge that this court exercise its discretion and allow the writ and on hearing reverse the order of the lower court.

Respectfully submitted,

HUGH T. FRANCIS,
*Counsel for Petitioners.*

# 'Record Liar' Jailed by FBI

William Thompson, 37, of 8245 Twelfth, whom Recorder's Judge Paul E. Krause at one time called the "biggest liar I ever saw," was under arrest today for passing illegal money orders in Spartansburg, S. C.

Thompson was arrested by FBI agents for cashing the money orders valued at $52 and $91 in Ohio and two others in Chicago.

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Thompson was arrested by FBI agents for cashing the money orders valued at $52 and $91 in Ohio and two others in Chicago.

Federal handwriting experts said the signatures were Thompson's.

On March 1, Krause tongue-lashed a jury for freeing Thompson on a charge that he sold $10 warranties on television picture tubes and charged the responsibility to his boss.

Later, as manager of a clothing store, he reported that he was robbed of $1,000 and several money orders.

Detective Kenneth Sylvester of the bad check detail said he would either be returned to Detroit or prosecuted by federal authorities on the money order offense.